

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

JULIUS W. ZUEHLKE et al.

Serial No.: 10/536,670

Filing Date: May 27, 2005

For: METHOD AND APPARATUS FOR
UNIFORMLY ADDING PARTICULATES
TO A COATING ON COMESTIBLES,
AND PRODUCTS PRODUCED
THEREBY

Examiner: Carolyn A. Paden

Group Art Unit No.: 1794

Confirmation No.: 9808

RESPONSE TO RESTRICTION REQUIREMENT

Mail Stop: Amendment

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

In response to the Office Action mailed July 1, 2008, Applicants elect the claims of Group I. The election is made with traverse.

In the outstanding Office Action, the claims were divided into three groups:

Group I: claims 1-43 and 101-144; Group II: claims 44-50 and 145-151; and Group III: claims 51-73 and 152-174. The rational for the restriction is that the Groups do not relate to a single general inventive concept under PCT Rule 13.1 because they lack the same or corresponding technical features. The Office Action goes on to state that process claims 22, 27 and 34, and product claim 44, do not contribute over the prior art PCT Publication No. WO 02/19834 (Day), and the apparatus does not contribute over the prior art U.S. Patent Publication No. 2002/0117108 (Pentecost). These reasons are traversed.

The recited process and product claims are novel over Day. For example, the following features of the recited claims are not found in Day. Claim 22 requires that particulates are applied from multiple, spaced apart, particulate distributors within a coating apparatus, the application of the particulates occurring simultaneously from each of the multiple particulate distributors. Claim 27 requires dividing a predetermined total amount of particulates to be applied to coated cores into at least three portions of approximately equal size; and applying each of the portions of particulates to the coated cores simultaneously from a different particulate distributor in a coating apparatus while the coated cores are being tumbled. Claim 34 requires applying the quantity of speckle particulates to cores having a light colored coating in a coating apparatus while a coating syrup is still wet so that the speckle particulates stick to the light colored coating; and drying the wet coating syrup with the speckle particulates thereon rapidly after the speckle particulates are applied to avoid transfer of color from the speckle particulates on one coated core to the background coating on other cores in the batch. Claim 44 requires a batch of at least 1000 kg of coated comestible cores in a coating apparatus, each of the coated cores having a hard crunchy coating of a first color and speckles of a second color randomly distributed over the cores, the cores in the batch having a generally uniform number of speckles from one coated core to the next.

The apparatus is novel over Pentecost. For example, the following features of the apparatus claims are not found in Pentecost. Claim 57 requires a rotating drum having an internal drum length of at least 4 feet for holding and tumbling comestible cores during a coating operation and a plurality of spaced apart, particulate distributors, each connected to a source of particulates, and placed within the drum so as to uniformly distribute particulates to the cores while the drum is rotating. Claim 61 requires a plurality of spaced apart, particulate distributors placed within the coating apparatus, each of the particulate distributors being connected to a supply of particulates. Claim 63 requires at least one syrup applicator for applying coating syrup to the cores within the coating apparatus; a controller connected to the at least one syrup applicator that controls the application of syrup in separate aliquots; at least one particulate distributor placed within the coating apparatus connected to a supply of particulates; and a controller connected to the particulate supply that automatically

activates the supply of particulates to the at least one particulate distributor at a predetermined time after a predetermined aliquot of syrup has been applied. Claim 66 requires a particulate applicator comprising at least one particulate distributor positioned to distribute particulates on the tumbling cores; a number of venturi eductors equal to the number of particulate distributors; a pneumatic hose connected between each venturi eductor and each particulate distributor; and a vibratory pan for holding a quantity of particulates and causing the particulates to vibrate and flow at a uniform rate into each venturi eductor. Claim 67 requires an apparatus for dividing a quantity of particulates into generally equal portions for uniform application to a batch of coated comestible cores comprising a sloped vibratory pan; and one or more dividers in the pan, each running generally parallel with the direction of slope, defining a plurality of lanes between the one or more dividers and the sides of the pan.

Since the expressed reason for restriction between Groups I, II and III has not been properly established, the restriction should be withdrawn.

The Office Action indicates that the numbering of the claims is not correct, and that "Misnumbered claims 74-174 [have] been renumbered 101-174." In that regard it is noted that a preliminary amendment filed with the application canceled claims 101-174. Thus the only claims in the application are 1-73. If any new claims are added, they will be numbered starting at 175.

The Office Action also notes "that 371 documents submitted with the application are related to a different invention and are from a different inventor than the inventor of this application." As explained in the Petition filed on July 22, 2008, the PCT division apparently added documents to the image file wrapper when this application was nationalized that came from a PCT application unrelated to the present case. Applicants have petitioned to have the erroneous documents removed from the image file wrapper. When that has been done, the image file wrapper should no longer present any confusion for the examiner.

Respectfully submitted,

/Steven P. Shurtz/

Steven P. Shurtz
Registration No. 31,424
Attorney for Applicants

Date: August 1, 2008
BRINKS HOFER GILSON & LIONE
P.O. Box 10395
Chicago, IL 60610
Tel. (312) 321-4200
Direct: (801-333-7906)